



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201008049

DEC 1 2009

Uniform Issue List: 401.06-00

Legend:

Taxpayer A = ***

Company B = ***

Individual C = ***

Decedent D = ***

Executor E = ***

Amount F = ***

Amount G = ***

Amount H = ***

Amount I = ***

Amount M = ***

Amount N = ***

Amount T = ***

County L = ***

State K = ***

Age A = ***

Date 1 = ***

Date 2 = ***

Date 3 = ***

Date 4 = ***

Date 5 = ***

Date 6 = ***

Date 7 = ***

Date 8 = ***

Date 9 = ***

IRA W = ***
***IRA X = ***
***IRA Y = ***
***Account Z = ***

***Calendar
Year 1 = ***Calendar
Year 2 = ***Calendar
Year 3 = ***

Dear ***:

This is in response to your request dated July 17, 2009, and supplemented by your letter dated August 28, 2009 in which you request rulings under section 401(a)(9) of the Internal Revenue Code (the "Code") regarding the tax consequences of the disposition of the assets of two IRAs previously held by Decedent D.

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested. Taxpayer A is the step-daughter and a beneficiary of the estate of Decedent D, who died on Date 1, 1998, at Age A. Decedent

D was the owner of IRAs W and X. At the time of Decedent D's death, the value of IRA W was estimated as Amount F, and the value of IRA X was estimated as Amount G. Individual C was the sole named beneficiary on the beneficiary designation forms for both IRA W and IRA X.

On Date 2, Taxpayer A filed a Petition to Determine Interest and Entitlement to Distribution in connection with her interest in Decedent D's estate ("Petition"). At the time, Individual C was incarcerated in County L, charged with Decedent D's murder. Taxpayer A asserts that the law of State K prohibits a murderer from inheriting from the murder victim, thus the Petition was filed to ascertain Taxpayer A's interest in Decedent D's estate. Taxpayer A's petition was taken off the calendar of the Superior Court of State K for County L to allow the pending criminal proceedings against Individual C to be resolved. In the interim, IRAs W and X remained in the custody of Company B with no distributions being made from those accounts.

On Date 3, Individual C was convicted of the second-degree murder of Decedent D and sentenced to fifteen years to life in prison. For the next several years, during the processing of a series of criminal proceedings and various appeals by Individual C, IRAs W and X remained in the custody of Company B, with no distributions being made from those accounts. On Date 4, the Supreme Court of State K denied Individual C's petition for review and issued its remittitur. On Date 5, Taxpayer A filed a Request to Put Petition to Determine Interest and Entitlement to Distribution Back on Trial and Supplement to Petition to Determine Interest and Entitlement to Distribution. After another series of appeals and denials by the courts of State K, Individual C's murder conviction became final and on Date 6, 2007, the Superior Court of State K for County L ordered Individual C barred from receiving any interest in the estate of Decedent D. Further, the Superior Court of State K for County L ordered that Taxpayer A was entitled to a distribution of all property remaining in Decedent D's estate, including, in accordance with Paragraph Fourth of Decedent D's will, the interest in IRAs W and X. However, Executor E was ordered to not distribute the remaining property of the estate, including the interest in IRAs W and X, to Taxpayer A until a final court order approving the final account and report by Executor E.

On Date 7, 2008, the Superior Court of State K for County L approved the final account and report by Executor E and ordered Executor E to distribute the remaining property of Decedent D's estate, including the interest in IRAs W and X to Taxpayer A.

On Date 8, 2009, the funds in IRA W totaling Amount H were transferred to an inherited IRA, IRA Y, and then later on Date 8 were transferred to Account Z, a non-IRA account. Also on Date 8, 2009, funds in IRA X totaling Amount I were transferred to IRA Y. Finally, on Date 9, 2009, Amount I, plus earnings, for a total of Amount M, were transferred from IRA Y to Account Z and the remaining funds in IRA X, totaling Amount N, were transferred into Account Z.

As of the date of Taxpayer A's ruling request, Taxpayer A asserts that no part of the funds of IRAs W and X, which are currently in Account Z and now total Amount T,

have been distributed to Individual C, or any other person who is or may have been a named beneficiary of IRAs W and X (subsequently IRA Y).

Based on the facts and representations, you request the following rulings:

1. That Individual C was the designated beneficiary of IRAs W and X held by Decedent D on the date of Decedent D's death, as well as on September 30th of the calendar year immediately following the calendar year of Decedent D's death, and therefore under the life expectancy rule of section 401(a)(9)(B)(iii) of the Code, the funds of IRAs W and X should have been distributed over the life of Individual C (or over a period not exceeding Individual C's life expectancy); and

2. Due to the factual circumstances of Decedent D's murder and subsequent State K Court proceedings which prevented Executor E from distributing the funds of IRAs W and X prior to the Date 7, 2008 court order, to the extent it is determined that the excise tax imposed by section 4974(a) of the Code applies to Taxpayer A, as the distributee of IRAs W and X (subsequently IRA Y), for failing to meet the minimum required distribution rules under sections 401(a)(9) and 408(a)(6) of the Code and sections 1.401(a)(9)-1 and 1.408-8 of the Final Income Tax Regulations for tax years 199 , 200 , 200 , 200 , 200 , 200 , 200 , 200 , 200 or 200 , a waiver of such tax is proper under section 4974(d) of the Code.

3. To the extent it is determined that any amount should have been distributed from IRAs W and X during any of the tax years 199 through 200 , given Taxpayer A's circumstances and the State K Court proceedings preventing Executor E from directing the distribution of IRAs W and X, Taxpayer A had reasonable cause for any resulting understatement or underpayment of tax and acted in good faith at all times with respect to such amounts and, as such, shall not be subject to any penalty under section 6662 of the Code for negligence or understatement of income tax relating to such distributions during such taxable years.

With respect to your first ruling request, section 401(a)(9)(A) of the Code provides that a trust shall not constitute a qualified trust under the Code unless the plan provides that the entire interest of each employee/IRA holder will be distributed to such employee/IRA holder not later than the required beginning date, or will be distributed, beginning not later than the required beginning date, in accordance with Regulations, over the life of such employee/IRA holder or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee/IRA holder or the life expectancy of such employee/IRA holder and a designated beneficiary).

Section 401(a)(9)(B)(ii) of the Code provides that a trust shall not constitute a qualified trust under the Code unless the plan/IRA provides that, if an employee/IRA holder dies before the distribution of the employee's/IRA holder's interest has begun by the required beginning date as set forth in section 401(a)(9) of the Code, the entire

interest of the employee/IRA holder will be distributed within 5 years after the death of such employee/IRA holder.

Section 401(a)(9)(B)(iii) of the Code provides, in part, that if any portion of a deceased Employee's/IRA holder's interest is payable to or for the benefit of a designated beneficiary, such portion must be distributed beginning not later than one year after the death of the Employee/IRA holder (or such later date that the Secretary may by regulations prescribe), over the life of such designated beneficiary (or over a period not exceeding the life expectancy of such beneficiary).

On April 17, 2002, Final Income Tax Regulations ("Regulations") were published in the Federal Register with respect to sections 401(a)(9) and 408(a)(6) of the Code. (See also, 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that: IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code; that in order to satisfy section 401(a)(9) of the Code for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003, the rules of section 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Regulations must be applied, except as otherwise provided; whether the 5-year-rule or life expectancy rule applies to distributions after death occurring before the IRA owner's required beginning date is determined under section 1.401(a)(9)-3 of the Regulations; the rules of section 1.401(a)(9)-4 of the Regulations apply for purposes of determining an IRA owner's designated beneficiary; and for purposes of determining the amount of the minimum distribution required for each calendar year from an IRA, the rules of section 1.401(a)(9)-5 of the Regulations apply.

Section 1.401(a)(9)-3 of the Regulations, Question and Answer 1, provides that if an employee/IRA holder dies before the employee's/IRA holder's required beginning date (and, thus, before distributions are treated as having begun in accordance with section 401(a)(9) of the Code), distribution of the employee's/IRA holder's entire interest must be made in accordance with one of the methods described in section 401(a)(9)(B)(ii) or (iii) and (iv) of the Code.

Section 1.401(a)(9)-3 of the Regulations, Question and Answer 3(a), provides, with respect to an employee/IRA holder who dies prior to his required beginning date, that distributions to a non-spouse beneficiary must commence on or before the end of the calendar year immediately following the year in which the employee/IRA Holder died. Further, section 1.401(a)(9)-5 of the Regulations, Question and Answer 5(c)(1), provides that the distribution period is determined using the non-spouse designated beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the decedent's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 1, provides that a designated beneficiary is an individual designated under the plan, either by the terms of

the plan/IRA, or by an affirmative election by the employee/IRA holder (or by the employee's/IRA holder's surviving spouse) specifying the beneficiary, who is entitled to a portion of the plan's/IRA's benefit, contingent on the participant's death or other specified event. The fact that an employee's/IRA Holder's interest under the plan/IRA passes to a certain individual under a will or otherwise under applicable state law does not make that individual a designated beneficiary unless the individual is designated a beneficiary under the plan/IRA.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 3, states that only individuals may be designated beneficiaries for purposes of section 401(a)(9) of the Code. A person that is not an individual, such as the employee's/IRA holder's estate, may not be a designated beneficiary.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 4(a), provides that in order to be a designated beneficiary, that beneficiary must be a beneficiary as of the date of the employee's/IRA Holder's death. The designated beneficiary will generally be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death. Consequently, any person who was a beneficiary as of the date of the employee's/IRA Holder's death, but is not a beneficiary as of the September 30 of the following calendar year (e.g., because the person receives the entire benefit to which the person is entitled before that September 30) is not taken into account in determining the employee's/IRA Holder's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's/IRA Holder's death. Accordingly, if a person disclaims entitlement to the employee's/IRA Holder's benefit, pursuant to a disclaimer that satisfies section 2518 of the Code by that September 30 thereby allowing other beneficiaries to receive the benefit in lieu of that person, the disclaiming person is not taken into account in determining the employee's/IRA Holder's designated beneficiary.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 4(c), provides, in part, that an individual who is a beneficiary as of the date of the employee's/IRA Holder's death and dies prior to September 30 of the calendar year following the calendar year of the employee's/IRA Holder's death without disclaiming continues to be treated as a beneficiary as of the September 30 of the calendar year following the calendar year of the employee's/IRA Holder's death in determining the distribution period for required minimum distributions after the employee's/IRA Holder's death, without regard to the identity of the successor beneficiary who is entitled to distributions as the beneficiary of the deceased beneficiary.

The law in State K provides that a person who feloniously and intentionally kills the decedent is not entitled to benefit under an IRA. Under the law in State K, the IRA is treated as becoming payable as though the killer predeceased the decedent. The Service notes that reaching a determination regarding the impact of Individual C's conviction of killing Decedent D on the issues involved in Taxpayer A's ruling requests lies within the scope of section 401(a)(9) of the Code.

Taxpayer A has submitted documentation establishing that Decedent D designated Individual C as the sole beneficiary of IRAs W and X on their respective beneficiary designation forms. Furthermore, Taxpayer A submitted documentation (including the relevant court orders and provisions under the Last Will and Testament of Decedent D) indicating that Taxpayer A would be entitled to the proceeds of IRAs W and X under said Will because of Individual C's disqualification from receiving said IRA proceeds due to his being convicted of the murder of Decedent D.

Accepting the representation that the law of State K treats Individual C as predeceasing Decedent D, Taxpayer A has not submitted documentation establishing that under the law of State K Individual C's conviction of murdering Decedent D had the effect of retroactively removing him as the designated beneficiary as of Date 1, 1998, or as of September 30 of the calendar year immediately following 1998. From the documentation provided by Taxpayer A, although Individual C is not entitled to receive any interest in amounts attributable to IRAs W and X, it is evident that, as of September 30 of the calendar year immediately following 1998, Individual C was alive, had not disclaimed his interest in IRAs W and X under section 2518 of the Code, was not subject to a final State K court judgment as to his guilt in the murder of Decedent D, and had not received any part of the interest in IRAs W and X. Accordingly, pursuant to section 1.401(a)(9)-4 of the Regulations, Question and Answer 4, Individual C is the designated beneficiary for purposes of determining the applicable distribution period for the amounts to be distributed from IRAs W and X.

Therefore, with respect to Taxpayer A's first ruling request, Individual C will be treated as the designated beneficiary of IRAs W and X as of the date of Decedent D's death as well as on September 30 of the calendar year immediately following 1998. Accordingly, under the life expectancy rule of section 401(a)(9)(B)(iii) of the Code, the funds under IRAs W and Y should have been distributed to Taxpayer A over the life of Decedent D (or over a period not exceeding Decedent D's life expectancy) beginning with the 1999 calendar year.

The Service notes that this ruling is limited to the ten (10) calendar years beginning with 1999 (Calendar Year 1) and ending with 2008 (Calendar Year 2) as a result of the amounts attributable to IRAs W and X (Amounts H, M and N) being transferred out of IRA Y on Dates 8 and 9 into Account Z, a non-IRA account. Except as provided later in this letter ruling, no opinion is expressed on the taxability of these amounts in any calendar year subsequent to Calendar Year 2.

With respect to requested ruling 2, section 4974(a) of the Code provides that if the amount distributed during the taxable year of the payee under any qualified retirement plan (defined under such section to include IRAs) is less than the minimum required distribution for such taxable year, a tax equal to 50% of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year is imposed and paid by the payee.

Section 4974(b) of the Code defines the term "minimum required distribution" as the minimum amount required to be distributed during a taxable year under section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2) of the Code, as the case may be, as determined by the Regulations. Section 408(a)(6) of the Code is the provision governing individual retirement accounts and provides that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) of the Code and the incidental death benefit requirements of section 401(a) shall apply to the distribution of an entire interest of any individual for whose benefit the individual retirement account is maintained.

As noted above, Section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code.

Section 4974(d) of the Code provides, in part, that if the taxpayer establishes that the failure to distribute the minimum required distribution during any taxable year was due to reasonable error and reasonable steps are being taken to remedy the shortfall, the Secretary may waive the 50% excise tax imposed by section 4974(a) of the Code for the taxable year.

Per our response to your first requested ruling, Individual C was the designated beneficiary for purposes of determining the applicable distribution period for IRAs W and X. Therefore, the distributee of IRAs X and W (subsequently IRA Y) was required to receive required minimum distributions measured using the life of Individual C (or paid over a period not exceeding Individual C's life expectancy), beginning in the 1999 calendar year (the calendar year immediately following the calendar year of Decedent D's death). Thus, Taxpayer A, the beneficiary of the estate of Decedent D and, as such, the distributee of amounts due under IRAs W and X, is subject to an excise tax equal to 50% of the amount by which such minimum required distributions exceeded the actual distributions received by Taxpayer A in each year starting in the 1999 Calendar Year and ending in Calendar Year 2.

However, Taxpayer A has established, through the documentation submitted, including the various court orders delaying the determination of the recipient of, and the payment of, the amounts in IRAs W and X (subsequently IRA Y), that the failure to receive required minimum distributions was due to circumstances beyond her control. Said circumstances give rise to reasonable cause. Accordingly, the excise taxes under section 4974(a) of the Code imposed because of Taxpayer A's failure to receive the required minimum distributions from IRAs W and X (subsequently IRA Y) during the taxable years beginning with 1999 and ending with Calendar Year 2 are hereby waived.

With respect to requested ruling 3, section 6662(a) of the Code imposes an additional 20% tax on the portion of the underpayment of tax to which section 6662 applies. Code section 6662(b) provides that section 6662 applies to that portion of an underpayment attributable to 1 or more of five (5) reasons enumerated therein.

With respect to your third ruling request, it has been established that Taxpayer A did not, in fact, receive any distributions from IRAs W and X (subsequently IRA Y) during the taxable years beginning with 1999 and ending with Calendar Year 2, and, therefore, had no income subject to Federal income tax relating to IRAs X and W (subsequently IRA Y) during such taxable years. Accordingly, because no distributions occurred with respect to those years, and because section 6662 of the Code is inapplicable to any amounts that should have been distributed from IRAs W and X (subsequently IRA Y), but were, in fact not distributed, to Taxpayer A during said taxable years, the Service need not address the issue raised by requested ruling 3.

The Service notes that a total distribution of all amounts standing in IRA Y (as the transferee IRA of amounts transferred from IRAs X and W) and a distribution of amounts remaining in IRA X were made in Calendar Year 3. Said amounts currently stand in Account Z, an account not described in section 408 of the Code. This letter ruling **does not conclude** that the Calendar Year 3 distribution from IRA Y, and the Calendar Year 3 distribution of Amount N from IRA X, to Account Z did not result in taxable distributions to the distributee or payee of IRA Y pursuant to section 408(d)(1) of the Code. To the contrary, the facts presented support the conclusion that taxable distributions did, in fact, occur in Calendar Year 3.

Additionally, as noted above, this ruling does not address the tax consequences, if any, that arose or may arise after the above-referenced amounts were transferred to Account Z.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or Regulations, which may be applicable hereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact ***** at (***)
-*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,


Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: ***

